

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8399 of 1994

with

SPECIAL CIVIL APPLICATIONS NO. 8459, 8460, 8461, 8462,
8463, 8464, 8465 AND 8466 OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? -

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2. To be referred to the Reporter or not? -

3. Whether Their Lordships wish to see the fair copy
of the judgement? -

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? -

5. Whether it is to be circulated to the Civil Judge?
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BAHADURSINH V JADEJA

Versus

STATE OF GUJARAT & OTHER

Appearance:

MRS DT SHAH for Petitioner in all petitions.

MR PM THAKKAR for Respondent No. 4 and 5
in all petitions.

MR ST MEHTA A.G.P. for respondents no. 1 to 3.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 29/08/98

COMMON ORAL JUDGEMENT

These are nine petitions arising out of the common order dated 23rd June, 1994 of the Collector, Surendranagar, whereby the appointments given to the petitioners have been cancelled. In other words, the award passed by the Industrial Tribunal, Rajkot dated 2nd January, 1992 has been set aside.

2. The petitioners were engaged as daily wagers on different dates in different years by the respondent Surendranagar Municipality. The petitioners raised industrial dispute before the Labour Court for their regularization and that matter was referred to the Industrial Tribunal, Rajkot. Some settlement took place in between the parties copy of which is placed on the record of this case and hence consent award was passed on the basis of the pursis and that pursis was treated as part of the award. In terms of the pursis the matter was decided by the Industrial Tribunal, Rajkot. The Collector, Surendranagar, passed the impugned order dated 23rd June, 1994 holding that the appointments of all the petitioners by way of resolution of the respondent Municipality was not in accordance with law and hence their appointments were cancelled and the status was restored, u/s 258 (1) of the Gujarat Municipalities Act, 1963.

3. Learned counsel for the petitioners challenged the impugned order of the Collector dated 23rd June, 1994 on the ground that the Collector's impugned order is arbitrary and is not sustainable in the eye of law as he has exercised the powers u/s 258 (1) of the Gujarat Municipalities Act, 1963 as an Appellate Authority and the impugned order is without jurisdiction.

4. I have gone through the impugned order of the Collector, Surendranagar with the help of the learned counsel for the parties. Section 258 (1) of the Gujarat Municipalities Act, 1963.

"258 (1) - If, in the opinion of the Collector, the execution of any order or resolution of a municipality, or the doing of anything which is about to be done or is being done by or on behalf a municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof and where

the execution of any work in pursuance of the order or resolution of the Municipality is already commenced or completed direct the municipality to restore the position in which it was before the commencement of the work."

5. By exercising the powers u/s 258 (1) of the Gujarat Municipalities Act, 1963, the Collector, Surendranagar can suspend execution of of any order or resolution of a municipality or doing of anything which is about to be done or is likely to cause injury or annoyance to the public or lead to a breach of the peace or in unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof and where the execution of any work in pursuance of the order or resolution of the municipality is already commenced or completed direct the municipality to restore the position in which it was before the commencement of the work. It does not refer to regarding any judicial order passed by the Tribunal or the Court. The Collector has not to interfere with or to exercise his powers as an Appellate Authority to consider the order of any Court or Tribunal.

6. In the case of H.H. Parmar V. Collector, Rajkot and Anr. reported in 1979 (2) G.L.R. 97, it was held that "under the resolution in question the petitioner had already taken charge and functioned for a period of about 13 months, there was nothing which remained to be done under the resolution and which could be suspended or stayed by the Collector. The Collector, therefore, had no authority or jurisdiction to make the impugned order. If the Collector had issued to the petitioner notice to show cause, he could have certainly stated to the Collector that since the Resolution in question was fully implemented and since nothing remained to be implemented thereunder, he had no authority or jurisdiction to make the impugned order. Therefore, the impugned order suffers from twofold legal infirmity and is liable to be quashed.

7. In the present case, the Collector, Surendranagar examined the resolution on the basis of which the petitioners' appointment and confirmation was passed. But the settlement which had already been made as part of a judicial authority it was erroneous when the Collector had no jurisdiction or authority to interfere except he could challenge the award of the Tribunal before this Court under Article 226 of the Constitution of India. As the Collector has no authority or power to interfere with the judicial order passed by the Tribunal or the Court.

As such, the impugned order dated 23rd June, 1994 passed by the Collector, Surendranagar is not sustainable in the eye of law and is liable to be quashed and set aside.

8. The petitioners have restricted their claim to entitlement of permanent status from 1-6-1997 and they propose to claim their arrears of pay and allowance with effect from 1-6-1997 though their seniority is to be considered from the date of their appointment. The respondent - municipality has no objection to the proposal made by the petitioners as the respondent municipality is ready to give the benefits as proposed by the petitioners.

9. Accordingly, all these petitions are allowed and the impugned order dated 23rd June, 1994 passed by the Collector, Surendranagar is hereby quashed and set aside. The respondent - municipality is further directed to pass necessary orders accepting the proposal made by the petitioners. Rule is made absolute with no order as to costs, in each of the petitions.

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